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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 23, 2000

PETITION OF

A & N ELECTRIC COOPERATIVE, CASE NO. PUE000231  
BARC ELECTRIC COOPERATIVE,  
COMMUNITY ELECTRIC COOPERATIVE,  
CRAIG-BOTETOURT ELECTRIC COOPERATIVE,  
MECKLENBURG ELECTRIC COOPERATIVE,  
NORTHERN NECK ELECTRIC COOPERATIVE, INC.,  
NORTHERN VIRGINIA ELECTRIC COOPERATIVE,  
POWELL VALLEY ELECTRIC COOPERATIVE,  
PRINCE GEORGE ELECTRIC COOPERATIVE,  
RAPPAHANNOCK ELECTRIC COOPERATIVE,  
SHENANDOAH VALLEY ELECTRIC COOPERATIVE,  
SOUTHSIDE ELECTRIC COOPERATIVE, INC.,  
OLD DOMINION ELECTRIC COOPERATIVE, and the  
VIRGINIA, MARYLAND & DELAWARE ASSOCIATION OF  
ELECTRIC COOPERATIVES

For a Petition for Declaratory Judgment

ORDER INVITING RESPONSES AND  
REQUESTS FOR HEARING

On April 22, 2000, A & N Electric Cooperative, BARC  
Electric Cooperative, Community Electric Cooperative, Craig-  
Botetourt Electric Cooperative, Mecklenburg Electric  
Cooperative, Northern Neck Electric Cooperative, Inc., Northern  
Virginia Electric Cooperative, Powell Valley Electric  
Cooperative, Prince George Electric Cooperative, Rappahannock  
Electric Cooperative, Shenandoah Valley Electric Cooperative,  
Southside Electric Cooperative, Inc., Old Dominion Electric  
Cooperative, and the Virginia, Maryland & Delaware Association

of Electric Cooperatives (hereafter collectively referred to as "the Cooperatives") filed a Petition for Declaratory Judgment with the State Corporation Commission ("Commission"). In their petition, the Cooperatives request the Commission to declare that an entity acquiring and operating electric systems located on military bases in Virginia that are being "privatized" under federal Defense Reform Initiatives ("Initiatives") would not be subject to the Commission's jurisdiction under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 of the Code of Virginia ("the Act").

The Cooperatives represent in their petition that Section 2688 of Title 10 of the United States Code provides authority to the Secretary of each of the branches of the service ("Military Department") to convey to private entities all defense utility systems. These systems include electric, water, waste water, and natural gas systems located on specific military bases. According to the petition, the Initiatives state that the Department of Defense ("DOD") is to privatize all such utility systems, except where privatization is uneconomical or where unique security reasons require ownership by the DOD.

The Cooperatives explain that they are interested in owning and operating electric systems located on military bases in Virginia that are beyond the point of delivery of the electricity from the retail supplier to the end users. They

assert that the territorial restrictions imposed under the Act, if applied to the facilities subject to privatization, could preclude the Cooperatives from owning and operating such facilities. The Cooperatives also request that the Commission address the broader question of whether the Act bars a successful bidder from owning and operating a military base electric system if the successful bidder is not the incumbent utility. They ask that the Commission issue a ruling regarding the rights of prospective bidders to operate and control such systems as compared to the territorial rights, if any, of the incumbent, certificated public utility.

The Cooperatives cite memoranda from DOD's Office of General Counsel as support that the DOD has not waived sovereign immunity with respect to disposal of its utility distribution systems. Among other things, they argue that Virginia law should not frustrate the intent and purpose of federal law regarding the transfer of control and operation of these privatized systems by the Military Department.

In the alternative, the Cooperatives request that if the Commission finds that the entity obtaining ownership and control of the facilities is subject to the Act, the Commission permit the certification of an entity other than the incumbent utility in whose service territory the military base resides. The Cooperatives support their alternative request for relief by,

among other things, asserting that the Military Department's decision to sell a system to a particular bidder is a determination that the service offered by other bidders, including the certificated service provider, is insufficient or inadequate. The Cooperatives urge the Commission to implement alternative regulations or to otherwise interpret the Act in a way that will allow all public service companies to participate in any Military Department competitive solicitation process in a manner consistent with the intent of Congress.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this petition should be docketed; that interested parties should be given an opportunity to participate in this proceeding, file responses to the Cooperative's petition and request a hearing thereon; that the Commission Staff may file a pleading responsive to the petition and the responses submitted by interested parties; and that the Staff and all parties should be given an opportunity to file a reply to any such response or request for hearing. Thereafter, the Commission may determine this matter on the pleadings or determine if further proceedings are necessary.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE000231.

(2) Copies of the Cooperatives' petition and accompanying documents shall be made available for public inspection in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., or can be ordered from counsel for the Cooperatives, Micheal L. Hern, LeClair Ryan, P.C., Innsbrook Corporate Center, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060.

(3) Any interested party may request a copy of the Cooperatives' petition, accompanying materials, and this Order by directing a request for the same in writing to counsel for the Cooperatives, Micheal L. Hern at the address set forth above. The Cooperatives shall serve within five (5) days of receipt, upon each such person making such request, copies of this Order and the Cooperatives' petition and accompanying materials.

(4) Any interested person desiring to respond to the Cooperatives' petition shall file with the Clerk of the Commission an original and fifteen (15) copies of a response on or before July 17, 2000. Responses shall include a precise statement of the interest of the party in the proceeding, and should address specifically how state and federal law affects the Commission's jurisdiction over the provision of utility service and allocation of service territory on United States

military installations in Virginia. Responses shall be filed with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, shall refer to Case No. PUE000231, and shall be served upon counsel for the Cooperatives on or before July 17, 2000. Service upon counsel for the Cooperatives shall be directed to Micheal L. Hern, Esquire, LeClair Ryan, P.C., Innsbrook Corporate Center, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060.

(5) Any person desiring a hearing in this matter shall file with the Clerk of the Commission an original and fifteen (15) copies of a request for hearing on or before July 17, 2000, stating in detail why the Cooperatives' petition cannot be adequately adjudicated on the written pleadings. Such request should set forth the issues upon which the party seeks hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for hearing is received, the Commission may enter an order upon the basis of the pleadings filed. All requests for hearing shall be filed with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, shall refer to Case No. PUE000231, and shall be served upon counsel for the Cooperatives at the address set forth above on or before July 17, 2000.

(6) On or before July 28, 2000, the Staff may file a response to the Cooperatives' petition and to the responses filed to that petition.

(7) On or before August 18, 2000, the Cooperatives or any interested party may file with the Clerk of the Commission their respective replies, if any, to the responses and requests for hearing filed herein.

(8) On or before June 16, 2000, each of the Cooperatives shall serve a copy of its petition and this Order on the Chairman of the Board of Supervisors of any county and upon the Mayor or Manager of any county, city, or town (or equivalent officials in counties, towns, and cities having alternate forms of government) within the Cooperatives' service areas. Service shall be made by first-class mail or delivery to the customary place of business or residence of the person served.

(9) On or before June 16, 2000, each of the Cooperatives shall serve a copy of its petition and this Order on the Chairman of the Board of Supervisors of any county and upon the Mayor or Manager of any county, city, or town (or equivalent officials in counties, towns, and cities having alternate forms of government) throughout the Commonwealth where military installations are located that may be affected by the Cooperatives' petition.

(10) On or before August 31, 2000, the Cooperatives shall file with the Clerk of the Commission proof of the service of this Order required in Ordering Paragraphs (8) and (9) herein.